

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JEAN POLIVKA,)	4:06CV3200
)	
Plaintiff,)	
vs.)	MEMORANDUM
)	AND ORDER
MICHAEL CHERTOFF,)	
SECRETARY OF HOMELAND)	
SECURITY, UNITED STATES)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
)	
Defendant.)	

The plaintiff, Jean Polivka, was employed as a term Immigration Information Officer at the Department of Homeland Security's Nebraska Service Center until the end of September 2006. She applied for permanent positions at the Nebraska Service Center in March, May, and June 2006, but was not hired on any occasion. Polivka claims that her age was a factor in the Department's hiring decisions, and she brings suit under the Age Discrimination in Employment Act, 29 U.S.C. § 633a.

The Department has filed a motion for summary judgment and has fully documented the selection process regarding each permanent position for which Polivka applied. The evidence establishes that applications for the positions were screened by a private company operating under contract with the U. S. Citizenship and Immigration Services, and that the applicants' ages were not disclosed to the company. Polivka did not receive enough points to qualify for an interview for the first two positions for which she applied. The third position was not funded, and, consequently, no selections were made from among the applicants.

Polivka has not responded to the summary judgment motion. While the failure to submit an opposing brief is not considered to be a confession of the motion, *see* NECivR 56.1(b)(2), the Department's evidence stands uncontroverted and proves that Polivka cannot prevail on her ADEA claim. Accordingly,

IT IS ORDERED that the defendant's motion for summary judgment (filing 45) is granted. Judgment shall be entered by separate document.

September 19, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge